



THE CITY OF REDMOND
HEARING EXAMINER

**FINDINGS AND DECISION
OF THE HEARING EXAMINER OF THE
CITY OF REDMOND**

IN THE MATTER OF THE APPEAL)	FILE: APP 99-011
OF GERALD SMITH)	Education Hill Townhomes
OF A STATE ENVIRONMENTAL POLICY)	
ACT (SEPA) DETERMINATION OF)	
NON-SIGNIFICANCE)	
_____)	

DECISION

The appeal of Gerald Smith of the SEPA threshold determination for the Education Hill Townhomes is **DENIED**.

INTRODUCTION

Gerald Smith (appellant) filed an appeal of the mitigated determination of non-significance (MDNS) for the Education Hill Townhomes proposal. The appeal was heard by Hearing Examiner Gordon F. Crandall on January 29, 2001 at 7:30 p.m. Appellant appeared pro se. The City's presentation was made by Steven Fischer. Applicant was represented by Donald E. Marcy.

The following witnesses testified under oath:

Steven Fischer
Planner
Planning Department
City of Redmond

Gerald Smith
Appellant
8510 169th Place
Redmond, WA 98052

Tim Cox
Planning Manager
Parks and Recreation
City of Redmond

HEARING EXAMINER'S DECISION
RE: Education Hill Townhomes (APP 99-011)

Donald E. Marcy
Applicant's Representative
70th Floor, Columbia Center
701 5th Ave.
Seattle, WA 98104-7016

Elliot Severson
Applicant's Developer
Gentry Investments LLC
195 Gilman Blvd. NE, Suite 201
Issaquah, WA 98027

The following exhibits were offered and admitted:

Exhibit A: Technical Committee Report dated January 12, 2000

Exhibit B: Technical Committee Report Attachments:

1. Vicinity Map
2. Legal Description
3. Notice of Public Hearing and Affidavits of Posting
4. Education Hill Townhomes Application
5. City of Redmond Ordinances 1884 and 1889
6. MDNS and SEPA Checklist
7. Notice of Decision and Approval Letter, November 9, 2000
8. Public Comment Letters and City Response Letters
9. City of Redmond Appeal Application Form
10. Education Hill Townhomes Environmental Document, May 3, 1999
 - Mitigated Determination of Non-Significance, May 3, 1999
 - SEPA Mitigation Agreement Letter, March 17, 1999
 - Attachment "A," Summary of Proposed Mitigation
 - Attachment "B," SEPA Traffic Mitigation
 - Expanded Environmental Checklist
 - Environmental Checklist
 - Expanded Environmental Analysis
 - Geotechnical Report, Associated Earth Sciences, Inc., December 22, 1994 (Revised)
 - Stormwater Drainage Report, Pacific Engineering Design, Inc., December 15, 1994 (Last Revision, January 15, 1997)
 - Wetland, Stream and Habitat Survey, Beak Consultants, December 1994
 - Supplemental Traffic Impact Analysis, Christopher Brown & Associates, July 23, 1997
 - Traffic Impact Analysis, Christopher Brown & Associates, December 23, 1994
 - 1998 Supplemental Traffic Impact Analysis, Christopher Brown & Associates
11. Tree Preservation Code
12. Landscaping Code

Exhibit C: Public Notice and addresses of notice

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Exhibit D: Photos showing large trailer blocking cul-de-sac on 169th Place NE
Exhibit E: Stipulation and Order Regarding Initial Hearing and Voluntary Dismissal of Certain Claims (July 22, 1996). Dr. Herbert A. Battrum v. City of Redmond
Exhibit F: Stipulation and Order of Dismissal (July 1998). Dr. Herbert A. Battrum v. City of Redmond
Exhibit G: William Popp Associates, Transportation Engineers/Planners Memorandum: Proposed Reconstruction of Redmond Elementary School Re: Traffic Impact Analysis (May 3, 1996)

The hearing commenced at 7: 30 p.m. and adjourned at 8:50 p.m. From the foregoing the Examiner makes these:

FINDINGS OF FACT

1. Applicant, Dr. Herb Battrum proposes to construct 91 townhomes on a site located north of the current terminus of 169th Avenue NE, south of the terminus of 169th Place NE, west of 171st Street NE, and NE of Redmond Elementary School. A site map is attached to these findings as Attachment 1. The site contains 15.23 acres and slopes generally from Northeast to Southwest.
2. The proposal has an involved legal history. When appellant applied for a building permit to construct the townhomes in 1995, the site was zoned for multiple-family residents R-20. The site has since been rezoned to R-5, a low moderate-density single-family classification. Through litigation, applicant secured a vested right to continue the proposed townhome development of the western portion of the site.
3. Access to the site will be from the south via an extension of 169th Avenue NE. Secondary emergency access will be provided from 169th Place NE, north of the site, which now dead-ends at the site. The access will be closed off by bollards or a gate, which can be breached by emergency vehicles only. A native growth buffer 100' deep is provided on the west edge of the site.
4. On May 3, 1999, the City of Redmond issued a mitigated determination of non-significance (MDNS) for the proposal, based on an expanded on environmental checklist, the scope of which rivaled a conventional EIS. See Exhibit B, Attachment 10. The expanded checklist covered topics such as earth, water, wetlands and habitat, land use, aesthetics and views, and

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transportation. Notice of the MDNS was given as required by ordinance. During the comment period, the appellant filed an appeal, asking that the MDNS be withdrawn and that an EIS be prepared which would include a new traffic study and a full wildlife study.

5. In his appeal, appellant contends:
 - a. The traffic study is not current.
 - b. The community was not properly represented when it was determined that applicant was vested to R-20.
 - c. The tree preservation plan does not conform to the City of Redmond's ordinances.
 - d. The emergency gate is not strategically located.
 - e. The main entry to the project is the same as for the new elementary school.
 - f. The tree buffer zone between the two areas of the site is not adequate.
 - g. The plans for development of the entire site are not integrated.
 - h. The owner did not communicate with the neighborhood for a dialog concerning the proposal.
6. The applicant and the City responded to these allegations, and contend that the appeal should be denied. They state:
 - a. The Traffic study was submitted with the proposal in 1994 and was supplemented in 1997 and 1998. Current traffic figures were used. These were sufficient to establish the expected traffic impacts of the proposal.
 - b. The project was vested by City Council action after litigation in King County Superior Court. The rezone to R-5 was reversed, and R-20 zoning reestablished by Ordinance 1889 in May 1996.
 - c. The City of Redmond's tree preservation requirements of 35% of all significant trees is not applicable, since the application vested prior to the adoption of that minimum. Applicant proposes to preserve 27% of the significant trees, and plant an additional 100 new trees as part of the development.
 - d. The emergency access has been approved by the City of Redmond Fire Department.
 - e. The traffic studies indicate that 169th Avenue NE is adequate for both the elementary school and the proposed improvement.

- f. The Redmond Community Development Guide does not require a buffer between different zones. Building setbacks and landscaping required by the Zoning Code will provide adequate buffers when buildings are constructed.
 - g. The SEPA analysis focused on the 91 townhomes proposal. References to the remaining part of the site were made to put the development site in context. Separate environmental review will be required when a proposal is made to develop that part of the site.
 - h. Applicants are encouraged to hold community meetings and discuss their projects with the neighborhood, but such meetings are not required. Failure to do so does not affect the validity of the MDNS.
7. Any conclusion of law deemed to be a finding of fact is adopted as such.

CONCLUSIONS OF LAW

- 1. The Hearing Examiner is authorized to conduct a hearing and make a decision on an appeal from a SEPA threshold determination. RCDG 20F.20.200.
- 2. The State Environmental Policy Act (SEPA) requires the City to prepare and an environmental impact statement (EIS) in connection with a proposal or a major action significantly affecting the quality of the environment. This threshold determination process is employed to determine whether or not the proposal does significantly affect the environment.
- 3. The City of Redmond makes a threshold determination based upon an environmental checklist and other information available to it. If the City determines that there will be no probable significant adverse environmental impact from a proposal, it shall issue a determination of non-significance (DNS). In the City of Redmond, the Technical Committee makes this threshold determination. RCDG 20F.30.130.
- 4. An applicant can avoid the requirement of preparing an EIS by changing or clarifying its proposal to mitigate its impact. If the changes proposed are sufficient, the City may issue a mitigated DNS. RCDG 20F.30.130; WAC 197-11-350. An MDNS was issued in this case.

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5. In order for the Examiner, on appeal, to require that an MDNS be set aside and an EIS be prepared for a proposal, he must be satisfied that the decision of the Technical Committee to issue an MDNS was clearly erroneous. This means that even though there is evidence to support the decision to issue an MDNS, the Examiner is left with a definite and firm conviction that a mistake has been made. *Polygon Corporation v. Seattle*, 90 Wn.2d 59 (1978).
6. The Examiner has considered the contentions of appellant and concludes that the decision to issue an MDNS was not clearly erroneous.
 - a. The traffic studies made for the proposal are reasonably current, having been recently updated twice since 1994. Once the City determines that the City's street system is adequate to absorb the additional traffic from a proposal, that decision is binding on the City even though traffic conditions may change while the proposal is under consideration. RCDG 20D.210.10-080 (6).
 - b. The lack of community involvement in the decision to vest the property to the R-20 zone was probably due mainly to the fact that litigation in court was required to settle the matter. The community is not notified of court dates or settlement discussions in such instances. The return to R-20 zoning, however, was done by Ordinance, which does provide for community notice and input.
 - c. The 35% tree preservation standards now in effect (RCDG 20D.80.20-070) does not apply to the project since it was vested at the time the current standards were adopted. Applicant will preserve 27% of the significant trees in the R-20 portion of the site and will be required to plant 100 new trees. When the entire site is developed, as many as 54% of the significant trees in the entire site are expected to be preserved.
 - d. The proximity of the entrance to the new school on 169th Avenue NE to the entrance to the proposed subdivision is a legitimate concern for safety of children. The Transportation Department has concluded that the street is adequate, based upon a traffic study, which was prepared after the school use was identified. The community center in the old school building on 166th Avenue NE opened after the traffic study was prepared. The street was found to be adequate for both uses.

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- e. There is no requirement that a buffer be provided between the R-20 and R-5 zones. Building setbacks and landscaping requirements are adequate to satisfy the requirements of SEPA.
- f. There is no requirement that both portions of the site be studied together when only the R-20 zone is to be developed. Including both zones in some elements does not require that the entire site be studied as a whole. Question 7 of the environmental checklist requires that an applicant reveal whether he has any plans for future additions, expansion or further activities related to or connected with the proposal.
- g. While the City of Redmond encourages applicants to meet with neighbors and share their plans with them, the RCDG does not require it. Applicant's failure to do so is not a reason to set this proposal aside.

7. Any finding of fact deemed to be a conclusion of law is adopted as such.

DECISION

The Examiner concludes that the decision of the Technical Committee to issue a mitigated determination of non-significance for Education Hill Townhomes was not clearly erroneous. Accordingly, the appeal of Gerald Smith seeking withdrawal of the MDNS is **DENIED**.

Done this 8th day of February 2001.

Attachment: Site plan

GORDON F. CRANDALL
Hearing Examiner

PROCEDURE FOR RECONSIDERATION

A party of record may file a written request for reconsideration with the Hearing Examiner. The request for reconsideration shall explicitly set forth alleged errors of procedure or fact. The final date for motion for reconsideration is 5 p.m. on **February 23, 2001**, and should be sent to the Office of the Hearing Examiner, City of Redmond, Mail Stop: PSFHE, 8701 160th Ave. NE, PO Box 97010, Redmond, Washington, 98073-9710, or via fax at (425) 556-2198.

SEPA APPEALS PROCEDURE

Pursuant to RCDG 20F.20.200, an appeal of the Hearing Examiner's final decision shall be made directly to the Superior Court.



THE CITY OF REDMOND
HEARING EXAMINER

February 8, 2001

Gerald Smith
8510 169th Place NE
Redmond, WA 98052

SUBJECT: **Education Hill Townhomes SEPA Appeal (APP 99-011)**

Dear Sir:

Enclosed is a copy of my decision for the above appeal. Pursuant to the Rules Governing Land Use and Zoning Proceedings in the City of Redmond, a party of record may file a written request for reconsideration with the Hearing Examiner. The request for reconsideration shall explicitly set forth alleged errors of procedure or fact. In this matter any request must be received by the Office of the Hearing Examiner of the City of Redmond prior to 5:00 p.m. on **February 23, 2001.**

Very truly yours,

Gordon F. Crandall
Hearing Examiner

Attachment

cc: Parties of Record